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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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In the Matter of Applications of )  
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Shareholders of Hispanic Broadcasting Corp. )  
(Transferor) )  
)  
and )  
)  
Univision Communications Inc. )  
(Transferee) )  
)  
For Consent to the Transfer of Control of Tichenor )  
License Corporation, et al. )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Docket No. MB 02-235

File Nos. BTC-20020723ABL, et al.

To : The Commission

OPPOSITION TO  
PETITION TO DENY AND INFORMAL OBJECTION

UNIVISION COMMUNICATIONS INC.

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Dated: September 18, 2002

## SUMMARY

Univision Communications Inc. (“Univision”) hereby opposes the “Petition to Deny” (“NHPI Petition”) filed by the National Hispanic Policy Institute, Inc. (“NHPI”), and the informal objection (“Elgin Objection”) filed by Elgin FM Limited Partnership (“Elgin”) against the above-referenced application (the “Application”). Neither petitioner contests that the Application fully complies with all Commission rules, or disputes the public interest showing made in the Application. In fact, NHPI and Elgin barely discuss the Application at all. Instead, both NHPI and Elgin fill their pleadings with attacks on Clear Channel Communications, Inc. (“Clear Channel”), an entity that is not even a party to the Application, at it will have only a 3.66% voting interest in post-merger Univision. Despite the obvious inability of an entity with 3.66% of the votes to overcome the 57% of votes that will be held by Univision’s single majority shareholder after the merger, NHPI alleges without factual support or explanation that Clear Channel will nonetheless exercise influence in Univision far in excess of its stock interest.

The argument therefore being made by NHPI and Elgin is effectively that the Commission’s multiple ownership rules are too poorly drafted to properly address the fairly simple ownership structure presented in the Application, and that the Application’s compliance with the Commission’s rules is not enough to satisfy the completely unsupported concerns of the petitioners. Univision is confident that the Commission’s multiple ownership rules are up to the task for which they were designed, and neither NHPI nor Elgin have presented any facts to suggest otherwise, or presented any basis for the Commission to apply a different standard to the applicants here than has been applied to all other transfer applicants before the Commission. Reduced to their essence, the NHPI Petition and the Elgin Objection are diatribes against Clear Channel, an entity that is not a party to the Application, and provide no legal or factual basis for

denying the Application. The NHPI Petition and Elgin Objection should therefore be promptly dismissed or denied and the Application granted.

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To:		The Commission

**OPPOSITION TO  
PETITION TO DENY AND INFORMAL OBJECTION**

Univision Communications Inc. (“Univision”), by its attorneys, hereby opposes the “Petition to Deny” (“NHPI Petition”) filed by the National Hispanic Policy Institute, Inc. (“NHPI”), as well as the informal objection (“Elgin Objection”) filed by Elgin FM Limited Partnership (“Elgin”),<sup>1</sup> both of which were filed against the above-referenced application (the

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<sup>1</sup> Elgin FM’s submission in this proceeding fails to qualify as a petition to deny, as, among other things, it lacks the declaration under penalty of perjury setting forth “specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]” required under Section 309(d)(1) of the Communications Act of 1934, as amended (the “Communications Act”). Similarly, it is far from clear that NHPI has standing under Section 309 to file its petition. As is discussed in detail in Hispanic Broadcasting Corporation’s (“HBC”) Consolidated Opposition to Petitions to Deny, NHPI ceased corporate existence in 1997 when its corporate status was terminated by the State of Delaware. As a result, the entity under whose name the NHPI Petition was filed does not exist and therefore does not qualify as a “party in interest” under

“Application”) on September 3, 2002. As is apparent from their respective filings, both NHPI and Elgin are far more concerned about the activities of Clear Channel Communications, Inc., an entity that is not even a party to the Application, than they are about the merits of the Application itself. However, to the extent the Application is discussed by NHPI and Elgin, neither contests that it fully complies with the Commission’s Rules. As the NHPI Petition proclaims, “[r]ather than treat the transaction as attributable, Clear Channel takes a 7.6%<sup>2</sup> interest in Univision, which has a single majority shareholder, and Univision converts its attributable voting interest into an ostensibly non-attributable interest and *voila* the transaction complies with the Commission’s multiple ownership rules.”<sup>3</sup> The NHPI Petition also correctly notes, seemingly with disappointment, that “the parties to the transfer have not requested a single waiver of the Commission’s rules.”<sup>4</sup>

The argument therefore being made by NHPI and Elgin is effectively that the Commission’s multiple ownership rules are too poorly drafted to properly address the fairly simple ownership structure presented in the Application, and that the Application’s compliance with the Commission’s rules is not enough to satisfy the completely unsupported concerns of the petitioners. Univision is confident that the Commission’s multiple ownership rules are up to the task for which they were designed, and neither NHPI nor Elgin have presented any facts to

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Section 309. Pursuant to Section 73.3584(e) of the Commission’s Rules, pleadings such as the NHPI Petition and Elgin Objection that fail to meet the requirements of Section 309 “are subject to return by the FCC’s staff without consideration.” 47 C.F.R. §73.3584(e).

<sup>2</sup> As disclosed in the Application, as amended, the actual voting interest in Univision that will be held by Clear Channel Communications, Inc. (“Clear Channel”) subsequent to the proposed Univision/HBC merger will be **3.66%**. See Application at Exhibit 16 (as amended August 29, 2002).

<sup>3</sup> NHPI Petition at 21 (emphasis in original).

<sup>4</sup> NHPI Petition at 14.

suggest otherwise, or presented any basis for the Commission to apply a different standard to the applicants here than has been applied to all other transfer applicants before the Commission. Reduced to their essence, the NHPI Petition and the Elgin Objection are diatribes against Clear Channel, an entity that is not a party to the Application, and provide no legal or factual basis for obtaining their requested relief. The NHPI Petition and Elgin Objection should therefore be promptly dismissed or denied and the Application granted.

**I. The NHPI Petition and Elgin Objection Are Fatally Defective Pursuant to Section 309 of the Communications Act, as They Fail to Present Specific Allegations of Fact Demonstrating That Grant of the Application Is Prima Facie Inconsistent With the Public Interest, Convenience and Necessity**

Section 309(d)(1) of the Communications Act requires that those petitioning to deny an application must provide “specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity].” As is discussed below, however, one is hard pressed to find in either the NHPI Petition or the Elgin Objection any specific allegations of fact relevant to the Application, much less facts sufficient to demonstrate that grant of the Application is prima facie not in the public interest. The absence of such factual allegations is fatal, and the NHPI and Elgin pleadings should be promptly dismissed, as “hearsay, rumor, opinion or broad generalization do not satisfy the specificity requirements of Section 309(d).”<sup>5</sup>

**A. The Petitioners Do Not Contest That the Application Complies With the Commission’s Multiple Ownership Rules**

While the Elgin Objection does not even discuss whether the Application complies with the Commission’s multiple ownership rules, NHPI, though brandishing a number of entirely

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<sup>5</sup> WFBM, Inc., 47 FCC2d 1267 (1974), at ¶ 2; *see also* License Renewal Applications of Certain Broadcast Stations Licensed for and Serving the Metropolitan Los Angeles, California Area, 68 FCC2d 75 (1978) (dismissing petitions to deny based on the failure to satisfy Section 309(d), including lack of specific allegations of fact).

unsupported allegations and conclusory statements, concedes that the Application does comply with the Commission's Rules. Statements from the NHPI Petition include:

- "The applications for transfer of control present a corporate structure, which only specifically complies with the Commission's attribution rules. In reality that structure is not an accurate depiction of how the licensee's affairs will be managed. ***But for*** New Univision's structured voting rights, Clear Channel, Univision, HBC and Entravision combined would hold attributable interests in multiple markets well in excess of what is permitted by Section 73.3555 of the Commission's Rules."<sup>6</sup>
- "New Univision is structured so that the parties can continue holding significant interest [sic] in broadcast properties, yet nominally comply with the Commission's attribution rules."<sup>7</sup>
- "Rather than treat the transaction as attributable, Clear Channel takes a 7.6%<sup>8</sup> interest in Univision, which has a single majority shareholder, and Univision converts its attributable voting interest into an ostensibly non-attributable interest and *voila* the transaction complies with the Commission's multiple ownership rules."<sup>9</sup>

While obviously written from a petitioner's perspective, these and numerous other statements from the NHPI Petition make clear that NHPI has looked long and hard and is still unable to point to any aspect of the Application that does not comply with the Commission's Rules. In fact, one can sense the frustration of NHPI in its quest to find a rule violation when the NHPI Petition correctly notes that "the parties to the transfer have not requested a single waiver of the Commission's rules."<sup>10</sup>

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<sup>6</sup> NHPI Petition at 4 (emphasis added).

<sup>7</sup> NHPI Petition at 20.

<sup>8</sup> As mentioned earlier, the actual voting interest in Univision that will be held by Clear Channel subsequent to the proposed Univision/HBC merger will be 3.66%. *See* Note 2, *supra*.

<sup>9</sup> NHPI Petition at 21 (emphasis in original).

<sup>10</sup> NHPI Petition at 14.



The statement of NHPI's own consulting engineer (Exhibit 17 of the NHPI Petition) is even more straightforward. Before launching into a hypothetical analysis of whether a non-existent entity holding all of the media interests of Univision, HBC, Clear Channel, and Entravision Communications Corporation ("Entravision") could comply with the multiple ownership rules, he states:

- "This office is [sic] undertaken a review of the technical aspects of the proposed merger between shareholders of Hispanic Broadcasting Corp. and Univision Communications Inc. Exhibit 17 attached to the Application for Transfer of Control sets forth a showing regarding compliance with the FCC's Multiple Ownership Rules. This office has reviewed the technical information contained within that Exhibit in depth, and agrees with the technical showing regarding ownership of broadcast properties by both corporations and that combining those holdings into a single company is technically compliant with the Rules."<sup>11</sup>

Thus, there is no question that the proposed Univision/HBC merger complies with the Commission's Rules. The petitioners are therefore left arguing that: (i) the shareholders of post-merger Univision will exercise influence out of proportion to their stock interest; and (ii) that the Commission's attribution rules fail to accurately gauge the level of influence an entity may have over a licensee, and that, as a result, the transaction is not in the public interest despite complying with the Commission's Rules. As is discussed below, neither of those arguments is factually or legally supported by the petitions, and both arguments are fundamentally unpersuasive.

**B. While Discussing at Great Length and With Great Zeal Its Dislike of Clear Channel, NHPI Fails to Note That Clear Channel Is Not a Party to the Application**

Even a cursory reading of the NHPI Petition reveals that the petition is directed not at the parties to the Application, or at the Application itself, but at Clear Channel. As the NHPI

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<sup>11</sup> NHPI Petition at Exhibit 17.

Petition indicates,<sup>12</sup> NHPI has previously filed against proposed Clear Channel acquisitions at the Commission. However, Clear Channel's only connection to the proposed merger here is that it, just like every other HBC shareholder, will be given stock in Univision in exchange for its HBC stock interest. That exchange of stock will leave Clear Channel with a 7.51% stock interest in Univision, but with only 3.66% of the votes in Univision.<sup>13</sup> As a shareholder with less than a 5% voting interest in the applicant, Clear Channel's interest is non-attributable,<sup>14</sup> and Clear Channel is therefore not considered to be a party to the Application under the Commission's Rules.<sup>15</sup>

Moreover, as the NHPI Petition itself points out, Univision has, and will continue to have after the merger, a single majority shareholder.<sup>16</sup> As a result, Clear Channel's voting interest could be many times larger than 3.66% and still not trigger attribution under the Commission's Rules. Thus, this is not a case where Clear Channel holds an interest that is just below the attribution threshold, and the petitioner is arguing that the attribution rule threshold should have been drawn a little lower; this is a case where the petitioner is asking that the attribution rule be thrown out the window in order to achieve the petitioner's desired result. However, the Commission has repeatedly stated that petitioners cannot disregard the plain meaning of its rules, and that the appropriate forum for seeking to revise such rules is not an application proceeding, but a rulemaking.<sup>17</sup>

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<sup>12</sup> NHPI Petition at 9.

<sup>13</sup> See Application at Exhibit 16 (as amended August 29, 2002).

<sup>14</sup> See 47 C.F.R. §73.3555, Note 2.

<sup>15</sup> See Univision Holdings, Inc., 7 FCC Rcd 6672 (1992), at ¶ 41; see also id. at ¶¶ 45-47.

<sup>16</sup> See NHPI Petition at 21.

<sup>17</sup> See Morton Jerome Victorson, Bankruptcy Trustee, 10 FCC Rcd 9499 (1995), at ¶¶ 5-6 ("Mills suggests that we should disregard the plain language of the local radio ownership

To fully appreciate the absurdity of NHPI's claim that Clear Channel will have significant influence over Univision's operations, the Commission should review the NHPI Petition carefully for information as to what mechanism would allow an entity with 3.66% of the votes to overcome the 57% of votes held by Univision's single majority shareholder. Such a review of the NHPI Petition reveals not even speculation as to how this could be accomplished, much less the "specific allegations of fact" required by Section 309 of the Communications Act. Instead, the NHPI Petition contains only repeated conclusory assertions that it will happen, seemingly attributing to Clear Channel mystical powers of control. There is, however, nothing mystical about the proposed merger, nor Clear Channel's small interest in the post-merger Univision.

Despite this fact, NHPI make numerous claims that "the Commission cannot reasonably expect Clear Channel to maintain a control level in New Univision commensurate with its purported ownership interest"<sup>18</sup> and the post-merger structure "is not an accurate depiction of how the licensee's affairs will be managed."<sup>19</sup> However, no facts are presented to support such claims, and the Commission has stated that "we believe it is not appropriate to infer, in the absence of information to the contrary, that [an applicant] will not faithfully carry out its representations or that it will be controlled and operated in a manner that differs from the

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rules and base the station's audience share on Mills' definition of what it believes to be the 'market' actually served by the stations . . . . Insofar as Mills is requesting that the Commission consider alternative definitions for determining the relevant market for audience share purposes, the appropriate course of action would be a request for rulemaking." (*citing Pattenon Brothers, Inc.*, 8 FCC Rcd 7595, 7596 (1993)).

<sup>18</sup> NHPI Petition at 3.

<sup>19</sup> NHPI Petition at 4.

agreement under consideration.”<sup>20</sup> The Commission should therefore reject NHPI’s tirade with regard to Clear Channel as both unsupported and irrelevant, dealing as it does with an entity that is not even a party to the Application.<sup>21</sup>

**C. While the Current and Past Relationship Between Clear Channel and HBC Is Clearly of Great Interest to NHPI, It Is Irrelevant to the Application and to a Post-Merger Univision**

Perhaps the most curious aspect of the NHPI Petition is that it is fundamentally at odds with itself. Were the Commission to accept NHPI’s contention, and reverse its prior rulings that Clear Channel’s interest in HBC is not attributable, what would the remedy be? The Commission would require that HBC and Clear Channel promptly take action to reduce Clear Channel’s interest in HBC’s stations to non-attributable levels in order to ensure compliance with the Commission’s multiple ownership rules. That is, however, precisely what consummation of the transaction proposed in the Application would accomplish. Thus, if, as NHPI claims, it is concerned that Clear Channel has too large a role in HBC’s operations, it should be applauding, not opposing, the Application. This leads to the anomalous situation where, if the Commission were to accept as fact every word about Clear Channel and HBC in the NHPI Petition, the appropriate action would be to grant the Application in order to reduce Clear Channel’s interest. In the alternative, if the Commission found the NHPI Petition to be entirely baseless, the appropriate result would still be the same – a grant of the Application.

While Univision will refrain from engaging in the type of speculation found abundantly in the NHPI Petition, the Commission is left to ponder why a petitioner that: (i) concedes the

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<sup>20</sup> News International, PLC, 97 FCC2d 349 (1984), at ¶ 17; *see also Cleveland Television Corp. v. FCC*, 732 F.2d 962, 969 (D.C. Cir. 1984) (“We decline to order the Commission to disregard an applicant’s corporate structure on the basis of a mere suspicion, unsupported by the evidence, that the applicant will operate as if no corporate structure existed.”).

<sup>21</sup> *See* Note 15, *supra*, and accompanying text.

Application's compliance with the Commission's Rules, (ii) is forced to rely on media articles and unadjudicated allegations from a third party lawsuit, both of which have been repeatedly rejected by the Commission as being inadequate grounds for a petition to deny,<sup>22</sup> and (iii) is unable to suggest, much less demonstrate, any conceivable method whereby Clear Channel could exercise an attributable level of influence over post-merger Univision, would go to such lengths to challenge the proposed merger, when denial of the Application would leave in place the very relationships that NHPI claims so deeply offend it.<sup>23</sup> Fortunately, the Commission need not spend too long pondering this question, as the NHPI Petition fails to present any basis for denying the Application, regardless of NHPI's motivation for filing it.

**D. NHPI's Claim That Univision Has an Attributable Level of Influence in Entravision Is a Red Herring, as Univision Has Already Disclosed in the Application Its Attribution in Entravision, and Committed in the Application to Reduce That Interest to Non-Attributable Levels Prior to the Proposed Merger**

The NHPI Petition makes numerous allegations as to the business relationship between Univision and Entravision, which is the largest third-party owner of stations affiliated with the Univision Network, and then asserts that these interests provide Univision with a sufficient level of influence in Entravision to require that they be deemed attributable. This is a fairly reasonable

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<sup>22</sup> Univision Holdings, Inc., 7 FCC Rcd 6672 (1992), at ¶ 44 ("Newspaper articles do not meet statutory pleading requirements."); Sonderling Broadcasting Co., 46 RR 2d 889 (1979) ("Where we have determined that applicants are otherwise qualified and that a grant of their applications would serve the public interest, we do not believe that deferral of our consent to a proposed transaction is warranted on the basis of unsubstantiated allegations of wrongdoing made by private litigants . . ."). While NHPI appears to suggest that language from an article in the *M Street Journal* regarding the merger should be given special credence because Clear Channel owns that publication, it is worth noting that the writer of the article repeatedly cites only one source of information -- *The Wall Street Journal*. See NHPI Petition at Exhibit 18.

<sup>23</sup> In this regard, Univision is particularly intrigued by the apparent connections between NHPI and Spanish Broadcasting System, Inc., a competitor of HBC, that are outlined in HBC's Consolidated Opposition to Petitions to Deny at Note 3.

request, since, as is indicated in the Application, Univision does indeed currently hold an attributable interest in Entravision. However, as is also stated in the Application,

It is noted that, at the time of the instant filing, UCI also has an attributable interest, including a 9.86% voting interest, in Entravision Communications Corporation, the ultimate parent of licensees of radio and television stations. Prior to consummation of the transaction proposed herein, however, the UCI interest will be converted to a non-voting, non-attributable stock interest.<sup>24</sup>

Prior to the filing of the petitions, the Application was also amended to note that Univision's two representatives on the Entravision board of directors have resigned from the Entravision board.<sup>25</sup> Thus, even now, the only basis for Univision's attribution in Entravision is its 9.86% voting interest. Once that stock is exchanged for Entravision non-voting stock (which has no right of representation on the board), as Univision has committed in the Application to do prior to the merger, Univision will no longer have an attributable interest in Entravision.

The Commission has long held that a "divestiture pledge removes any concern as to a violation of Section 73.3555 of our Rules."<sup>26</sup> NHPI has presented nothing to disprove that pledge, and instead offers only unsupported speculation as to Univision's alleged future involvement with Entravision.

In particular, NHPI argues that Univision's role as a program supplier to some of Entravision's stations ensures a continuing level of influence in Entravision sufficient to merit attribution. In response to such arguments in the past, the Commission has responded that "[w]e have previously recognized, however, that substantial equity involvement by a network with an

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<sup>24</sup> Application at Exhibit 16, Note 1.

<sup>25</sup> See Application at Exhibit 16 (amended August 29, 2002).

<sup>26</sup> Scripps Howard Broadcasting Co., 8 FCC Rcd 2326 (VSD 1993), at ¶ 3.

affiliate does not automatically equate to control of the station by that network.”<sup>27</sup> In a subsequent effort to delineate precisely how large the equity interest of a program supplier could be before running the risk of attributable influence, the Commission adopted the Debt/Equity Rule.<sup>28</sup> Under that rule, which was designed specifically to assess the degree of influence a program supplier might have on a station in which it also holds equity, a program supplier’s interest is deemed to create the risk of attributable influence if it constitutes more than 33% of the combined debt/equity of the station.<sup>29</sup> As the NHPI Petition concedes, Univision’s equity interest in Entravision (Univision has no debt interest in Entravision) is already below that threshold.<sup>30</sup>

NHPI is therefore arguing once again that the Commission’s attribution rules fail to accurately discern whether a party is in a position to exert significant influence over a licensee, even where the attribution rule at issue was designed to address the specific relationship (program supplier/shareholder) of which NHPI complains. However, the Commission has repeatedly stated that where a petitioner urges the Commission to ignore the language of its rules in order to reach the result petitioner seeks, the appropriate forum is not an adjudicatory proceeding, but a rulemaking proceeding.<sup>31</sup> The Application, including Univision’s commitment

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<sup>27</sup> Univision Holdings, Inc., 7 FCC Rcd 6672 (1992), at ¶ 26 (citing National Broadcasting Co., 6 FCC Rcd 4882 (1991)).

<sup>28</sup> 47 C.F.R. §73.3555, Note 2. See also Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests, Report and Order, 14 FCC Rcd 12559 (1999), *recon.*, 16 FCC Rcd 1097 (2001).

<sup>29</sup> 47 C.F.R. §73.3555, Note 2. See also Shareholders of AMFM, Inc., 15 FCC Rcd 16062 (2000), at ¶ 42 Note 39 (“In setting the threshold at 33%, the Commission’s goal was not only to attribute interests with potential to control, but also those with a realistic potential to exert significant influence.” (citation omitted)).

<sup>30</sup> NHPI Petition at 18.

<sup>31</sup> Spanish Radio Network, 10 FCC Rcd 9954 (1995), at ¶ 9 (“Insofar as Miami Petitioners would have the rule recast so as to prohibit broadcast concentration in a market defined

to reduce its interest in Entravision to non-attributable levels, complies with the Commission's Rules, and the petitioners present not a single fact to suggest otherwise.

## **II. Elgin's Speculative and Unsupported Claims That Grant of the Application Will Harm "Spanish Language Media Operators" Is Misplaced**

Like NHPI, Elgin asserts without support that the post-merger Univision will be inextricably bound to Clear Channel and Entravision. Unlike NHPI, however, Elgin does not even mention the Commission's multiple ownership rules, and instead merely asserts that such a combination, hypothetical though it might be, would constitute "a new Spanish language media monopoly that will materially harm existing local Spanish language broadcasters."<sup>32</sup>

As discussed extensively above, neither Elgin nor NHPI have presented any factual basis for their allegations that Clear Channel and Entravision should be considered parties to the Application, and the alleged anti-competitive effects of such a hypothetical combination are therefore not relevant to the Commission's consideration of the Application. Even if that were not the case, however,

the Commission is "not an appropriate forum in which to adjudicate the general applicability of the antitrust laws . . . ." In this regard, we have expressly recognized the primary role played by other governmental entities that are responsible for, and have the expertise to consider, alleged anticompetitive conduct."<sup>33</sup>

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by language comprehension, the appropriate course of action is to request that the Commission institute a generic rule making proceeding to change its multiple ownership rules and policies." (*citing Pattenon Brothers, Inc.*, 8 FCC Rcd 7595, 7596 (1993))).

<sup>32</sup> Elgin Objection at 3.

<sup>33</sup> *Univision Holdings, Inc.*, 7 FCC Rcd 6672 (1992), at ¶¶ 34-35 (*citing Teleprompter Corp.*, 89 FCC2d 417, 436 (1982)).



Even with regard to the interplay of the Commission's multiple ownership rules, diversity goals, and competition in general, the Commission has long rejected consideration of format, including language,<sup>34</sup> in applying its rules:

Miami Petitioners' arguments that non-English speakers constitute a distinct broadcast market and that Spanish programming serves the public interest are not dispositive for purposes of evaluating the instant transfer applications under the multiple ownership rules. Although Spanish speakers may be perceived by those seeking to reach them as a distinct market, the multiple ownership rules are not geared toward such a market definition. Neither the plain language of Section 73.3555 nor the pronouncements in *Radio Rules* and *Radio Rules Reconsideration* address consideration of a market defined by language.<sup>35</sup>

The reasons are obvious. First, station formats are transient, and can change overnight. As a result, it would be impossible for any entity to monopolize a radio station format unless it literally owned all radio stations and could therefore ensure that no other stations adopted that format. That is clearly not a real-world scenario, and as recently reported in *The Wall Street Journal*, "[o]f the 369 radio stations started between 1998 and 2001, 141, or 38%, were in Spanish."<sup>36</sup> Elgin's unsupported assertions of monopoly power based on format language do not survive even cursory scrutiny.

While Elgin seeks to paint the Univision/HBC combination as competitively unstoppable, that same *Wall Street Journal* article, citing Arbitron data, indicates that the HBC stations here at

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<sup>34</sup> Buckley Broadcasting Corporation of California, 9 FCC Rcd 1930 at ¶ 1 Note 2 (1994) ("The Commission does not regulate or scrutinize programming formats, nor does it take programming formats into consideration when making licensing decisions.")(citing Development of Policy re: Changes in the Entertainment Formats of Broadcast Stations, 60 FCC2d 858 (1976), *recon. denied*, 66 FCC2d 78 (1977), *rev'd sub nom. WNCN Listeners Guild v. FCC*, 610 F.2d 838 (D.C. Cir. 1979), *rev'd*, 450 U.S. 582 (1981)). See also Brawley Broadcasting Co., 13 FCC Rcd 21119 (1998) (denying informal objection against the proposed sale of a group of radio stations based on objections to the assignee's Spanish language format).

<sup>35</sup> Spanish Radio Network, 10 FCC Rcd 9954 (1995), at ¶ 8 (emphasis in original).

<sup>36</sup> Eduardo Porter, *For Hispanic Radio, a Feud Boils Over in Market on Fire*, *The Wall Street Journal*, Sept. 6, 2002, at A1.

issue constitute less than 10% of the 600 Spanish language radio stations in the United States.<sup>37</sup>

Although the Elgin Objection claims that grant of the Application will have an anti-competitive impact, it fails to indicate how this impact will occur. Instead, Elgin merely asserts that it will.

This unsupported assertion is patently inadequate to justify the relief Elgin seeks – denial of the Application. As the Commission wrote in denying a similar NHPI petition:

NHPI failed to make any specific allegations to support its claim that the merger would be anti-competitive and detrimental to Hispanic American broadcasters. NHPI does not provide sufficient details to support this allegation. This argument is purely speculative and unsupported by any evidence.<sup>38</sup>

The Elgin Objection should fare no better, lacking as it does any specific allegations of fact that would indicate grant of the Application is not in the public interest, and substituting instead baseless assertions and conclusory statements that the proposed merger “will materially harm existing local Spanish language broadcasters.”<sup>39</sup> The Elgin Objection should therefore be summarily dismissed or denied.

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<sup>37</sup>

Id.

<sup>38</sup>

Shareholders of AMFM, Inc., 15 FCC Rcd 16062 (2000), at ¶ 44. *See also id.* at ¶ 38 (“Roslin also has failed to articulate any specific future anti-competitive business practices of Clear Channel, or that Clear Channel could, or would, likely engage in such practices based on its control of Katz. Roslin’s bare allegation that Clear Channel could, or would act in an anti-competitive manner in the future is purely speculative and unsupported, and thus is inadequate to establish the requisite injury.”).

<sup>39</sup>

Elgin Objection at 3.

## CONCLUSION

Neither the NHPI Petition nor the Elgin Objection contest that the Application fully complies with the Commission's Rules. Similarly, neither pleading presents any basis for the Commission to conclude that grant of the Application is not in the public interest, nor contests the public interest showing made in the Application. Univision therefore urges the Commission to promptly dismiss or deny the NHPI Petition and Elgin Objection, and to grant the Application so as to expedite the public interest benefits the merger will provide.

Respectfully submitted,

**UNIVISION COMMUNICATIONS INC.**

By:   
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Brendan Holland

Its Attorneys

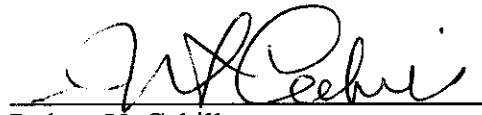
SHAW PITTMAN LLP  
2300 N Street, NW  
Washington, D.C. 20037  
(202) 663-8000

Dated: September 18, 2002

## DECLARATION

I, Robert V. Cahill, do hereby declare under penalty of perjury that the following is true and correct:

1. I am Vice Chairman and Secretary of Univision Communications Inc., the proposed transferee of Tichenor License Corporation et al., licensee of radio stations KGBT(AM), Harlingen, Texas, et al., in FCC File Nos. BTC-20020723ABL, et al., in the proceeding designated MM Docket 02-235.
2. I have reviewed the attached "Opposition to Petition to Deny and Informal Objection." The facts stated therein, except those based on official records or other documents of which the Federal Communications Commission may take official notice, are true to the best of my personal knowledge and belief.



Robert V. Cahill  
Vice Chairman and Secretary

Dated: 9-17-02

**CERTIFICATE OF SERVICE**

I, Rhea Lytle, Secretary at Shaw Pittman LLP, do hereby certify that I caused a copy of the foregoing **"OPPOSITION TO PETITION TO DENY AND INFORMAL OBJECTION"** to be sent by hand delivery this 18<sup>th</sup> day of September, 2002, to the following:

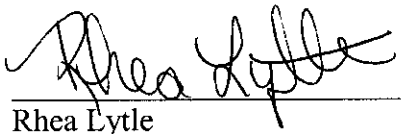
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Media Bureau  
445 12<sup>th</sup> Street, SW  
Room 2-A730  
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*Counsel for Elgin FM Limited Partnership*

  
\_\_\_\_\_  
Rhea Lytle

\*Delivery Via U.S. Mail